

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building		(2) MEETING DATE June 13, 2006		(3) CONTACT/PHONE James Caruso, Senior Planner (805) 781-5702	
(4) SUBJECT Continued hearing to consider an appeal by Jean-Noel and Maketta Fourmeaux Du Sartel of the Subdivision Review Board's decision to deny their request to divide an existing 198.85 acre parcel into two parcels of 80.02 acres and 118.83 acres each. The proposed project is within the Agriculture land use category and is located on the north side of Almond Drive, approximately 2 miles east of the intersection of Almond Drive and South El Pomar Road, approximately 8 miles east of the community of Templeton. The site is in the El Pomar/Estrella planning area (SUB2003-00155/Tentative Parcel Map CO 04-0154). Supervisorial District No. 1					
(5) SUMMARY OF REQUEST The appellants propose to divide a 198.85 acre parcel designated Agriculture into two parcels of 80.02 and 118.83 acres each. The SRB denied the proposed project based on inconsistency with Agriculture and Open Space Element policies. The applicants filed an appeal of that action on December 16, 2005					
(6) RECOMMENDED ACTION Adopt the attached resolution to deny the appeal and affirm the Subdivision Review Board's decision and disapprove Tentative Parcel Map CO04-0154 based on the findings in Exhibit A					
(7) FUNDING SOURCE(S) N/A		(8) CURRENT YEAR COST N/A		(9) ANNUAL COST N/A	
(10) BUDGETED? <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A					
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): Agricultural Commissioner's Office					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____					
(13) SUPERVISOR DISTRICT(S) <input checked="" type="checkbox"/> 1st, <input type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input type="checkbox"/> All			(14) LOCATION MAP <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A		(15) Maddy Act Appointments Signed-off by Clerk of the Board
(16) AGENDA PLACEMENT <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Hearing (Time Est. <u>20 min</u>) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			(17) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> N/A		
(18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A			(19) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A		
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) _____			(21) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		(22) Agenda Item History <input type="checkbox"/> N/A Date <u>March 28, 2006</u> _____
(23) ADMINISTRATIVE OFFICE REVIEW 					

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 6-13-06



SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

DATE: JUNE 13, 2006

TO: BOARD OF SUPERVISORS

FROM: JAMES CARUSO, SENIOR PLANNER

VIA: WARREN HOAG, DIVISION MANAGER, CURRENT PLANNING *WH*

SUBJECT: CONTINUED HEARING TO CONSIDER AN APPEAL BY JEAN-NOEL and MAKETTA FOURMEAUX DU SARTEL OF THE SUBDIVISION REVIEW BOARD'S DECISION TO DENY THEIR REQUEST TO DIVIDE AN EXISTING 198.85 ACRE PARCEL INTO TWO PARCELS OF 80.02 ACRES AND 118.83 ACRES EACH. THE PROPOSED PROJECT IS WITHIN THE AGRICULTURE LAND USE CATEGORY AND IS LOCATED ON THE NORTH SIDE OF ALMOND DRIVE, APPROXIMATELY 2 MILES EAST OF THE INTERSECTION OF ALMOND DRIVE AND SOUTH EL POMAR ROAD, APPROXIMATELY 8 MILES EAST OF THE COMMUNITY OF TEMPLETON. THE SITE IS IN THE EL POMAR/ESTRELLA PLANNING AREA (SUB2003-00155/TENTATIVE PARCEL MAP CO 04-0154). SUPERVISORIAL DISTRICT NO. 1

RECOMMENDATION

Adopt the attached resolution to deny the appeal and affirm the Subdivision Review Board's decision and disapprove Tentative Parcel Map CO 04-0154 based on the findings in Exhibit A.

DISCUSSION

The applicant has appealed the Subdivision Review Board's decision to deny the proposed tentative parcel map for Parcel Map CO 04-0154. The proposed map involves the division of an existing parcel of approximately 201 acres into two parcels of approximately 80.2 and 118.8 acres each. The property is in Agricultural Preserve. It was placed under Williamson Act contract in 1970 and the property owners have been receiving the tax reduction benefits of the contract since that time. Historic and current

CO 04-0154

agriculture uses of the property consist primarily of grazing. The property contains Class II, III and IV irrigated and Class IV non-irrigated soils.

County Land Use Ordinance Section 22.04.024c states that where a legal lot of record in the Agriculture category is under Williamson Act agricultural preserve contract, the minimum parcel size that can be requested is based on the terms of the preserve contract. For the subject property, the agricultural preserve contract size is 80 acres. However, the Land Use Ordinance further states that approval of a land division under an agriculture preserve is **discretionary** and a parcel size **larger than the minimum** designated in the contract may be required to ensure agricultural sustainability in accordance with the provisions of the adopted agricultural preserve rules of procedure.

APPEAL ISSUES

The appeal states the following:

Issue 1. The project is subject to the Section "C" of 22.22.040 and that the contract minimum is used to determine the minimum parcel size.

Staff Response:

The subject project is actually subject to the ordinance requirements in effect when the application was accepted for processing. The previous requirement was section 22.04.024c of the County Code. This section, which is applicable to this project states:

"...the minimum parcel size is based on the terms of the preserve contract. However, approval of the land division under agricultural preserve contract is discretionary and a parcel size larger than the minimum designated in the contract may be required to ensure agricultural sustainability in accordance with the provisions of the adopted agricultural preserve rules of procedure."

According to this Section of Title 22, the deciding factor in the determination of a minimum parcel size is not the contract minimum. The deciding factor is, as stated in the Section cited above, agricultural sustainability in accordance with the county's Rules of Procedure to Implement the California Land Conservation Act of 1965. The information received from the Ag Commissioner's Office explicitly states that the project as proposed is not sustainable in accordance with the provisions of the Rules of Procedure.

Table 1 of the Rules of Procedure sets forth a 160 acre minimum parcel size for creation or conveyance of parcels with non-irrigated Class II and IV soils, and 320 acres for Class VII soils. Section B2 of the Rules of Procedure states that the parcels sizes in Table 1 are to be considered floors and not ceilings and that the county may require larger minimum parcel sizes than the designated minimum to ensure agricultural



sustainability. Therefore, based on the Rules of Procedure for Implementing the Williamson Act, the property does not qualify for the parcel sizes requested.

While the agricultural preserve contract establishes a minimum parcel size, this parcel size does not apply if the parcels are not sustainable in agriculture (22.04.024c). In this instance, no information has been submitted to support a finding that the proposed parcels would be sustainable. And, the information that has been submitted and evaluated by the Agricultural Commissioner, supports a conclusion that the proposed parcels are not viable.

Issue 2. The appellant asserts that staff has used ordinance sections that are not applicable to the proposed project. Specifically, the appellant asserts that new ordinance section 22.20.040 was used in the SRB staff report instead of the previous ordinance section 22.04.024c.

Staff Response:

Staff's analysis of the project and the findings has always cited the previous ordinance section (i.e. 22.04.024). The proposed project's inconsistency with Title 22 is not based on the new ordinance language; it is based on the previous ordinance language that speaks to agricultural sustainability and the Rules of Procedure. That applicable language from the previous agricultural division ordinance states:

"...the minimum parcel size is based on the terms of the preserve contract. However, approval of the land division under agricultural preserve contract is discretionary and a parcel size larger than the minimum designated in the contract may be required to ensure agricultural sustainability in accordance with the provisions of the adopted agricultural preserve rules of procedure."

As stated in response to issue No. 1, the project has been found to be inconsistent with the adopted Rules of Procedure and cannot be approved.

Issue 3. The appellant states that two other projects in the area (CO99-0057 and CO02-0190) have been approved after the Board found the proposed projects were consistent with the general plan.

Staff Response:

The resolution and findings for the two tentative parcel map applications are attached to this staff report. These projects were denied at the SRB and appealed to the Board. After the public hearing, the Board directed staff to return with findings for approval.

The adopted findings for CO99-0057 state,

CO99-0057
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"...the proposed parcel sizes conform to the minimum parcel sizes established by the land conservation act contract".

The adopted findings for CO02-0190 state,

"...the proposed parcel sizes of 138.67 and 88.5 acres are larger than and conform to the 80 acre minimum parcel size set forth in the Land Conservation Act contract..."; and

"As the resulting parcels following the subdivision will be substantially larger than 40 acres in size, the Board of Supervisors finds, based upon the large size of the resulting parcels and other evidence of their agricultural viability submitted at the hearing including the capability of the soils in the area and the proven viability of other similarly sized parcels surrounding the site, that each of these parcels will be large enough to sustain their agricultural use as required by the provisions of Government Code section 66474.4".

As stated above, the contract minimum is not the factor to be used to determine the appropriateness of the proposed parcel size. Instead, the proper determination is based on the Rules of Procedure. The proper parcel size for the subject site would be 160 acres. The adopted findings for the two parcel maps cited by the appellant contain different facts. The findings for CO02-0190 indicate that information was presented that indicated the under the minimum parcel sizes were agriculturally viable. No such facts are presented with the subject application.

OTHER AGENCY INVOLVEMENT/IMPACT

The Agricultural Commissioner has reviewed the project and their comments are attached.

FINANCIAL CONSIDERATIONS

The applicant paid the required appeal fee.

RESULTS

Denial of the appeal will result in the property remaining in its existing configuration and in conformance with the general plan.

Approval of the appeal would require staff to conduct an environmental review of the proposed project to determine impacts to applicable resources. Results of the initial study of environmental impacts will determine the level of environmental review

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appropriate (eg. Mitigated Negative Declaration or EIR). After the environmental review is completed the project can return to your board for approval.

ATTACHMENTS:

1. Resolution affirming the Subdivision Review Board's Decision
2. Appeal Letter
3. Findings for CO99-0057 and CO02-0190
4. Staff Report from the December 5, 2005 Subdivision Review Board

A handwritten signature or set of initials, possibly reading 'CE' or 'CB', located in the bottom right corner of the page.

ATTACHMENT 1

A handwritten signature or set of initials in the bottom right corner of the page. The ink is dark and the strokes are fluid, appearing to be a stylized 'C' followed by a flourish.

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

_____, 2006

PRESENT: Supervisors

ABSENT:

RESOLUTION NO. _____

RESOLUTION AFFIRMING THE DECISION OF THE
SUBDIVISION REVIEW BOARD AND DENYING
THE APPLICATION OF JEAN-NOEL and MAKETTA FOURMEAUX DU SARTEL
FOR TENTATIVE PARCEL MAP CO04-0154

The following resolution is now offered and read:

WHEREAS, on December 5, 2005, the Subdivision Review Board of the County of San Luis Obispo (hereinafter referred to as the "SRB") duly considered and denied the application of JEAN-NOEL and MAKETTA FOURMEAUX DU SARTEL for Tentative Parcel Map CO04-0154; and

WHEREAS, JEAN-NOEL and MAKETTA FOURMEAUX DU SARTEL has appealed the SRB decision to the Board of Supervisors of the County of San Luis Obispo (hereinafter referred to as the "Board of Supervisors") pursuant to the applicable provisions of Titles 21 and 22 of the San Luis Obispo County Code; and

WHEREAS, a public hearing was duly noticed and conducted by the Board of Supervisors on March 28, 2006 and continued to June 13, 2006, and a determination and decision was made on June 13, 2006; and

WHEREAS, at said hearing, the Board of Supervisors heard and received all oral and written protests, objections, and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to said appeal; and

WHEREAS, the Board of Supervisors has duly considered the appeal and finds that the appeal should be denied and the decision of the SRB should be affirmed subject to the findings set forth below.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the recitals set forth hereinabove are true, correct and valid.
2. That the Board of Supervisors makes all of the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.

38

3. This project is found to be statutorily exempt from the California Environmental Quality Act under the provisions of Public Resources Code section 21080(b)(5), which provides that CEQA does not apply to projects which a public agency rejects or disapproves.

5. That the appeal filed by JEAN-NOEL and MAKETTA FOURMEAUX DU SARTEL is hereby denied and the decision of the SRB is affirmed that the application of JEAN-NOEL and MAKETTA FOURMEAUX DU SARTEL for Tentative Parcel Map CO04-0154 is hereby denied..

Upon motion of Supervisor _____, seconded by Supervisor

_____, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing resolution is hereby adopted.

Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: _____

Deputy County Counsel

Dated: _____

May 31, 2006

STATE OF CALIFORNIA,)

)

ss

County of San Luis Obispo)

I, _____, County Clerk and ex-officio Clerk of the Board of Supervisors, in and for the County of San Luis Obispo, State of California, do hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of Supervisors, as the same appears spread upon their minute book.

39

WITNESS my hand and the seal of said Board of Supervisors, affixed this _____
day of _____, 2006.

County Clerk and Ex-Officio Clerk of the
Board of Supervisors

(SEAL)

By: _____
Deputy Clerk

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EXHIBIT A
FINDINGS FOR SUB2003-00154
C0 04 0154 (DU SARTEL)

CEQA Exemption

- A. This project is found to be statutorily exempt from the California Environmental Quality Act under the provisions of Public Resources Code section 21080(b)(5), which provides that CEQA does not apply to projects which a public agency rejects or disapproves.

Tentative Map

- B. The design of the proposed subdivision is not consistent with applicable general and specific plans because the parcel sizes proposed are smaller than those allowed under Section 22.04.024c of the county Land Use Ordinance, which states that even though the minimum parcel size is based on the contract, a minimum parcel size larger than the minimum designated in agricultural preserve contract may be required to insure agricultural sustainability in accordance the provisions of the adopted Rules of Procedure for Implementing the California Land Conservation Act of 1965. The proposed parcels (80.2 and 118.83 acres) are not viable according to the policies and criteria for determining minimum parcel size which aim to protect agricultural resources and promote the long-term viability of agriculture.
- C. The design of the proposed subdivision is not consistent with applicable general and specific plans because the parcel sizes proposed (80.2 and 118.83 acres) are smaller than those allowed under Agricultural Policy 21 of the Agriculture and Open Space Element which requires a 320 acre minimum parcel size based on the current agricultural use of the property.
- D. The site is not physically suitable for the type of development proposed because the proposed parcels are designated Agriculture and are not sustainable as agricultural parcels without additional intensification.
- E. The design of the proposed subdivision is not consistent with the County's adopted Rules of Procedure for Implementing the California Land Conservation Act of 1965 because the parcel sizes are smaller than those allowed in Table 1, column 3 of the Rules of Procedure which require a 160 acre minimum parcel size for property with non-irrigated Class III and IV soils and 320 acres for VII soils.

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ATTACHMENT 2

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Inland Appeal Application

San Luis Obispo County Department of Planning and Building

PROJECT INFORMATION

Type of permit being appealed:

- ☐ Plot Plan
 ☐ Site Plan
 ☐ Minor Use Permit
 ☐ Development Plan
 ☐ Variance
- ☒ Land Division
 ☐ Lot Line Adjustment
 ☐ Sending Site Determination
 ☐ Other _____

File Number: CO 04-0154 SUB 2003-00155

The decision was made by:

- ☐ Planning Director
 ☐ Building Official
 ☐ TDC Review Committee
 ☐ Administrative Hearing Officer
- ☒ Subdivision Review Board
 ☐ Planning Commission
 ☐ Other _____

Date the application was acted on _____

The decision is appealed to:

- ☐ Board of Construction Appeals
 ☐ Board of Handicapped Access
 ☐ Planning Commission
 ☒ Board of Supervisors

BASIS FOR APPEAL

Appeal Reasons: Please state your reasons for the appeal. In the case of a Construction Code Appeal, note specific code name and sections disputed (*attach additional sheets if necessary*). Please Note: An appeal should be filed by an aggrieved person or the applicant at each stage in the process if they are still unsatisfied by the last action.

See Attached

Specific Conditions. The specific conditions that I wish to appeal that relate to the above referenced grounds for appeal

Condition Number	Reason for appeal (<i>attach additional sheets if necessary</i>)

APPELLANT INFORMATION

Print name: Thomas D. Waylett, Esq. on behalf of Jean-Noel and Marketta Fourmeaux Du SartellAddress: 1200 Vine Street, Paso Robles, CA 93446-2268 Phone Number (daytime): (805) 238-2300

I have completed this form accurately and declare all statements made here are true.

Signature [Signature]Date 12/16/05

OFFICE USE ONLY

Date Received: _____

Amount Paid: _____

By: _____

Receipt No. (if applicable): _____

Revised 7/31/01/ep

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600 • 1-800-834-4636

E-MAIL: ipcoplbg@slonet.org

FAX: (805) 781-1242

WEBSITE: <http://www.slccoplbgldg.com>

13

BASIS FOR APPEAL

We hereby appeal the decision of the Subdivision Review Board to deny Parcel Map CO 04-0154 for the following reasons:

This project is a Vesting Tentative Map, and therefore subject to the Land Use Ordinance prior to the 2004 update. Section 22.22.040 of that LUO states that if the parcel Proposed for division is under Agricultural Preserve Contract, which this property is, then Subsection "C" applies. Subsection "C" states that "the minimum parcel size is based on the terms of the preserve contract". The contract on the subject property, which has been in place since 1972 states a minimum parcel size of 80 acres.

Staff argues that the project is subject to the revised Land Use Ordinance Section 22.20.040, which was adopted after this project was accepted for processing. Staff further contends the resulting parcels would not be large enough to sustain AG use, yet completely ignore the potential irrigation from the two existing 350 to 400 gpm wells on the property.

Staff ignores two previously approved projects, which were under similar contracts, with 80 Acre Minimum parcel Sizes, and comparable acreages. The first project, Parcel Map CO 99-0057, was approved in May of 2002, contained 171 Acres, and resulted in two (2) 85 Acre Parcels. The second project, which is immediately to the West of this project, was approved in July of 2003 as Parcel Map CO 02-0190, and was comprised of 227 Acres, resulting in 138 Acre and 88 Acre parcels.

The findings for the two (2) above projects provided that the projects:

- 1) Were consistent with the General Plan;
- 2) Met all applicable provisions of Title 21;

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- 3) Satisfied all applicable provisions of Title 22 because of the conformance with the minimum parcel sizes of the Contract; and
- 4) The sites were physically suitable.

Denial of this project would be in clear violation of the application ordinance and likely a violation of the applicant's equal protection rights given the County's previous action in regard to other applicants in virtually identical circumstances.

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ATTACHMENT 3

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EXHIBIT A
FINDINGS - C099-0057 -BARTH/HILL
VESTING TENTATIVE PARCEL MAP

Environmental Determination

- A. The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 1500 et seq) has been issued on April 5, 2002, for this project.

Tentative Parcel Map

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the proposed project is allowable in the Agriculture land use category.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 21 of the County Code.
- D. The proposed project satisfies all applicable provisions of Title 22 of the County Code because the proposed parcel sizes conform to the minimum parcel sizes established by the land conservation contract.
- E. The site is physically suitable for the type of development proposed because the property is currently used for agriculture and will continue in agricultural use after the division.
- F. The site is physically suitable for the proposed density of the development proposed because the applicant has agreed to limit the density to one primary dwelling per parcel with additional dwellings subject to the County Land Use Ordinance standards for farm support units.
- G. The design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat because significant wildlife or fish habitat does not exist on the site.
- H. The design of the subdivision or the type of improvement will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision; or that substantially equivalent alternate easements are provided.
- I. The proposed subdivision complies with Section 66474.6 of the State Subdivision Map Act, as to methods of handling and discharge of waste.

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EXHIBIT A
FINDINGS OF APPROVAL FOR CO 02-0190

Environmental Determination

- A. The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) has been issued on June 6, 2003 for this project. Mitigation measures are proposed to address aesthetic, biological, and water impacts and are included as conditions of approval.

Tentative Map

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the proposed project is allowable in the Agriculture land use category.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 21 of the County Code.
- D. The proposed project satisfies all applicable provisions of Title 22 of the County Code because the proposed parcel sizes of 138.67 acres and 88.5 acres are larger than and conform to the 80 acre minimum parcel size set forth in the Land Conservation Contract with the County encumbering the property.
- E. The site is physically suitable for the type of development proposed because the property is currently used for agriculture and will continue in agricultural use after the division.
- F. The site is physically suitable for the proposed density of the development proposed because the Land Use Ordinance limits density to two primary dwellings per parcel with additional dwellings subject to the County Land Use Ordinance standards for farm support units.
- G. The design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat because significant wildlife or fish habitat does not exist on the site.
- H. The design of the subdivision or the type of improvement will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision; or that substantially equivalent alternate easements are provided.
- I. The proposed subdivision complies with Section 66474.6 of the State Subdivision Map Act, as to methods of handling and discharge of waste.
- J. The proposed subdivision involves the division of a 227.17 acre parcel, which is under a Land Conservation Contract with the County under the Williamson Act, into two new resulting parcels of 138.67 acres and 88.5 acres. The 227.17 acre parcel of contractual land proposed to be divided is not prime agricultural land. As the resulting parcels

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following the subdivision will be substantially larger than 40 acres in size, the Board of Supervisors finds, based upon the large size of the resulting parcels and other evidence of their agricultural viability submitted at the hearing including the capability of the soils in the area and the proven viability of other similarly sized parcels surrounding the site, that each of these parcels will be large enough to sustain their agricultural use as required by the provisions of Government Code Section 66474.4.

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ATTACHMENT 4

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**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

SUBDIVISION REVIEW BOARD

*Promoting the wise use of land
Helping build great communities*

MEETING DATE December 5, 2005	CONTACT/PHONE James Caruso 781-5702	APPLICANT Fourmeaux du Sartel	FILE NO. CO 04-0154 SUB2003-00155
SUBJECT Request by Jean-Noel and Karketta Fourmeaux Du Sartell for a vesting tentative parcel map to subdivide an existing 201 acre parcel into two parcels of 80.2 acres and 118.83 acres each for the purpose of sale and/or development. The project does not include off-site road improvements. The proposed project is within the Agriculture land use category and is located on the north side of Almond Drive, approximately 2 miles east of the intersection of Almond Drive and South El Pomar Road, approximately 8 miles east of the community of Templeton. The site is in the El Pomar/Estrella planning area.			
RECOMMENDED ACTION Request for denial of Vesting Tentative Parcel Map CO 04-0154 based on the findings listed in Exhibit A.			
ENVIRONMENTAL DETERMINATION This project is found to be statutorily exempt from the California Environmental Quality Act under the provisions of Public Resources Code section 21080(b)(5), which provides that CEQA does not apply to projects which a public agency rejects or disapproves.			
LAND USE CATEGORY Agriculture	COMBINING DESIGNATION None	ASSESSOR PARCEL NUMBER 034-231-018	SUPERVISOR DISTRICT(S) 1
PLANNING AREA STANDARDS: None applicable to this project.			
LAND USE ORDINANCE STANDARDS: 22.22.040 - Agricultural category			
EXISTING USES: Grazing			
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Dry farm/Grazing <i>East:</i> Dry farm/Grazing <i>South:</i> Vineyards/Orchards <i>West:</i> Vineyards/Orchards			
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Public Works, Environmental Health, Parks Division, APCD, Ag Commissioner.			
TOPOGRAPHY: Moderate slopes.		VEGETATION: Grasses; few scattered oaks.	
PROPOSED SERVICES: Water supply: On-site well Sewage Disposal: Individual septic system Fire Protection: CDF		ACCEPTANCE DATE: July 19, 2004	
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER ♦ SAN LUIS OBISPO ♦ CALIFORNIA 93408 ♦ (805) 781-5600 ♦ FAX: (805) 781-1242			

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ORDINANCE COMPLIANCE:

Minimum Parcel Size

Section 22.22.040 (old ordinance 22.20.040) of the Land Use Ordinance establishes standards for determining minimum parcel sizes in the Agriculture land use category. The proposed project site is under agricultural preserve contract. Section 22.20.040.c.1 of the LUO states that minimum parcel size for lands in ag preserve is based on the contract. The contract was initiated in 1972 and states that the minimum parcel size is 80 acres.

However, the subject contract also states that the minimum parcel size is subject to current rules for the approval of a subdivision. The current rules used to determine minimum parcel size include land capability and existing use tests, the Ag and Open Space Element and the Rules of Procedure. In this case, the current rules would allow for a 160 acre minimum parcel size. There is no current ag use of the property.

Also, state law (AB 1492), requires a local government to find that there is a substantive basis for approving the application and map, it must do so on the basis of a specific and affirmative determination that each of the resulting parcels is large enough to sustain their agricultural uses to which it is restricted, and that the subdivision will not result in residential development of the resulting parcels except where residential use will be incidental to the commercial agricultural use of the land.

According to the Ag Commissioner's office, there is not a substantive basis to make the above determination regardless of LUO statements regarding Williamson Contract land. As their department's attached correspondence states, the parcel is not large enough to sustain ag uses and residential development that is not incidental to the commercial ag use of the land would be the most likely result.

General Plan Consistency

Ag and Open Space Element Policy 20a states,

"Where a land division is proposed, the proposed parcels should be designed to ensure the long term protection of agricultural resources."

Ag and Open Space Element Policy 21 states,

"Minimum parcel size...shall be based upon the existing and potential use of the land for cropland and grazing. Minimum parcel size standards for the creation of new parcels are shown in Figure 2-2."

The proposed project is not consistent with these policies. Long term protection of ag resources, according to the Ag Commissioner's Office, is based on land capability and existing ag uses. Also, minimum parcel sizes in Table 2-2 of the Ag and Open Space Element requires 160 acre parcel sizes.

LEGAL LOT STATUS:

The lot is a portion of a larger lot that was created by a pre-1893 map. There is no indication that it is a legal lot.

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FINDINGS - EXHIBIT A

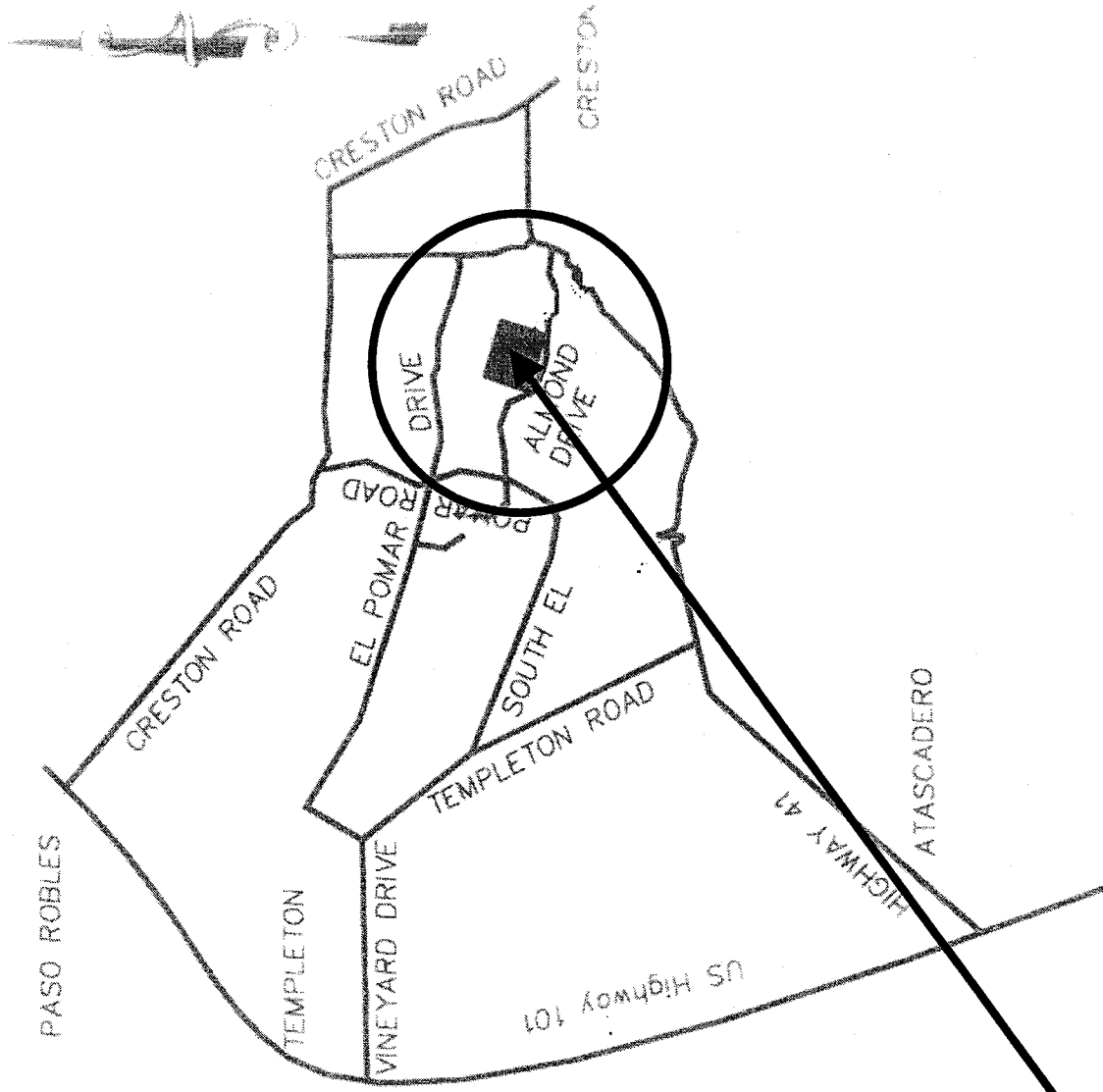
CEQA Exemption

- A. This project is found to be statutorily exempt from the California Environmental Quality Act under the provisions of Public Resources Code section 21080(b)(5), which provides that CEQA does not apply to projects which a public agency rejects or disapproves.

Tentative Map

- B. The proposed map is inconsistent with applicable county general and specific plans because it does not comply with Ag and Open Space Policies 20 and 21 because the proposed project will not:
1. ensure the long term protection of agricultural resources; and
 2. meet minimum parcel size standards for the creation of new parcels are shown in Figure 2-2.
- C. The proposed map does not meet intent of Section 66474.4 of the Government Code because the proposed project must be found to have a substantive basis for approving a subdivision map on the basis of a determination that each resulting parcel is large enough to sustain their agricultural uses.

23



SITE

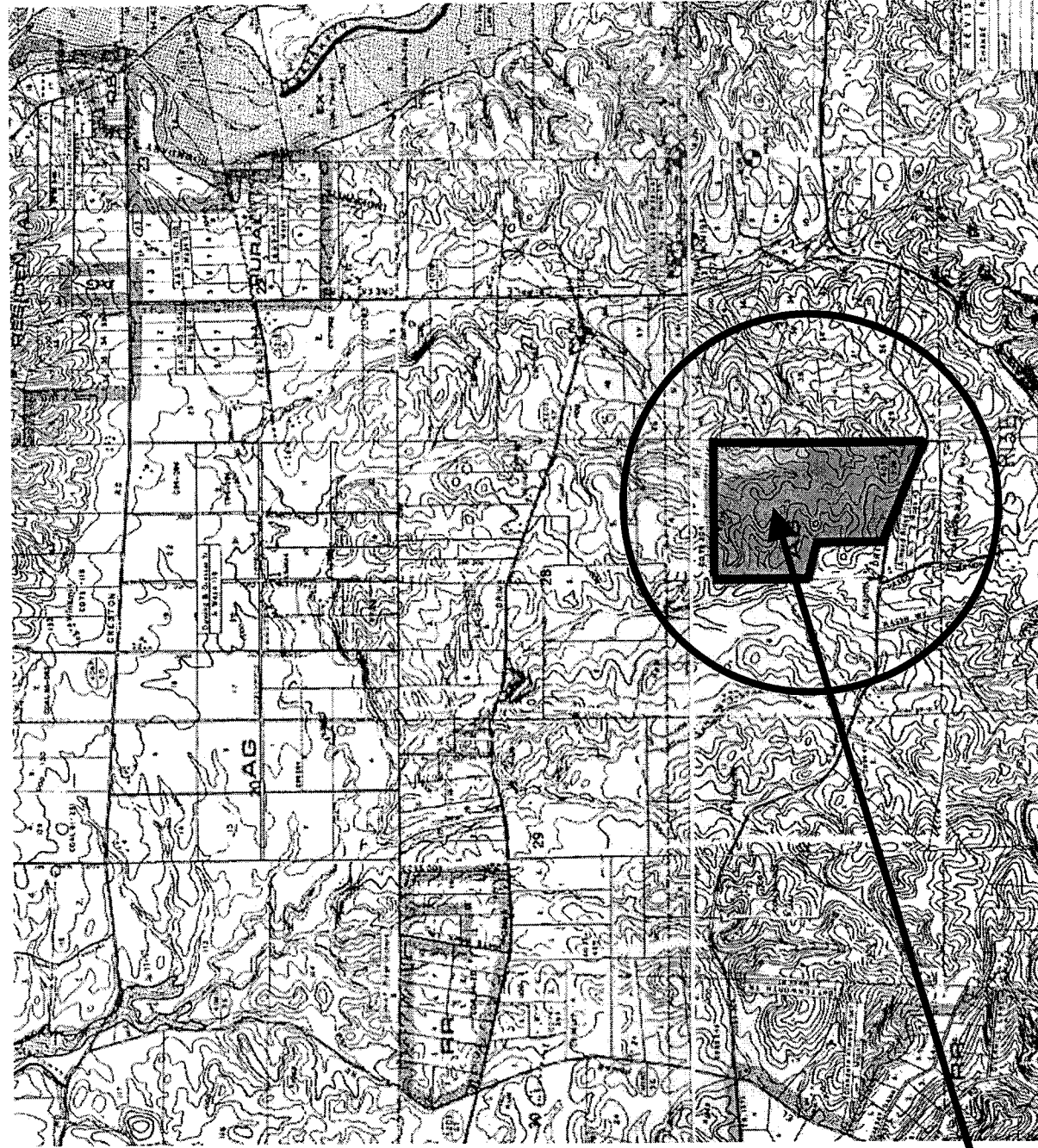
PROJECT

Parcel Map
Fourmeaux SUB2003-00155 CO04-0154

EXHIBIT

Vicinity Map





SITE

PROJECT

Parcel Map
Fourmeaux SUB2003-00155 CO04-0154

EXHIBIT

Land Use Category





SITE

PROJECT

Parcel Map
Fourmeaux SUB2003-00155 CO04-0154

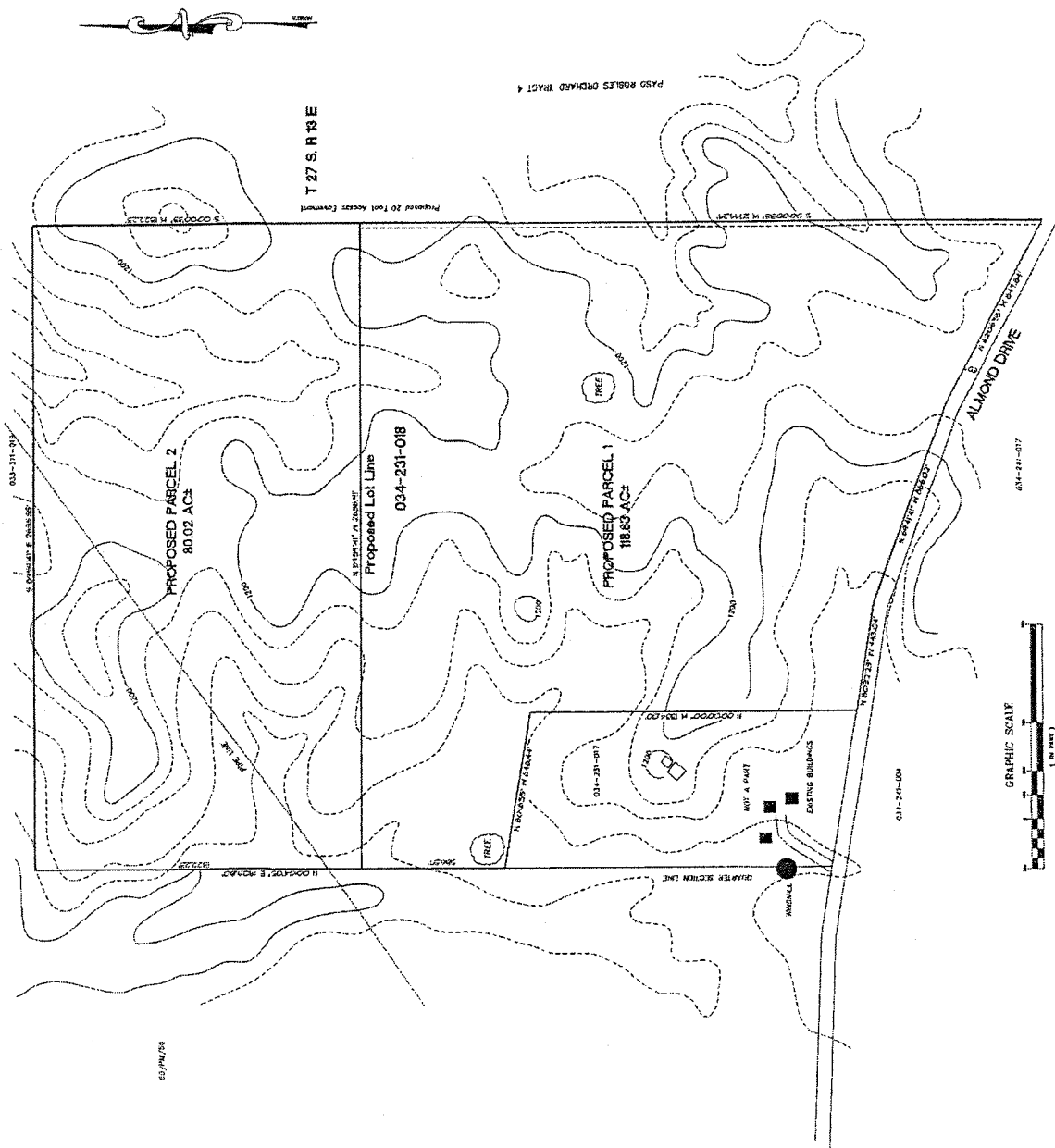
EXHIBIT

Aerial



20

SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING



EXHIBIT

Site Plan

Fourmeaux SUB2003-00155 CO04-0154





COUNTY OF SAN LUIS OBISPO

Department of Agriculture/Measurement Standards

2156 SIERRA WAY, SUITE A • SAN LUIS OBISPO, CALIFORNIA 93401-4556
ROBERT F. LILLEY
AGRICULTURAL COMMISSIONER/SEALER

(805) 781-5910
FAX (805) 781-1035
AgCommSLO@co.slo.ca.us

DATE: January 5, 2005
TO: Mr. Caruso, Senior Planner
FROM: Lynda L. Auchinachie, Agriculture Department *JA*
SUBJECT: Fourmeaux Parcel Map, SUB2003-00155 (0968)

Summary of Findings

The proposed project does not meet the subdivision requirements established in Land Use Ordinance, Title 22, Section 22.22.040. The map appears to have been submitted based on the existing agricultural preserve contract, however, the proposal is not consistent with the current agricultural preserve program Rules of Procedure that require larger minimum parcels than proposed. The proposed subdivision would result in potentially significant impacts to agricultural resources due to separate ownership of smaller parcels more likely to be developed as rural residences, increased home site development, compatibility impacts and indirect conversion pressure on adjacent agricultural properties. For these reasons, the Agriculture Department does not recommend approval of the proposed parcel map.

Introduction

Our report responds to your request for comments on the proposed Fourmeaux Parcel Map. Comments and recommendations are based on policies in the San Luis Obispo County Agriculture and Open Space Element, the Land Use Ordinance, the California Environmental Quality Act (CEQA), and on current departmental policy to conserve agricultural resources and to provide for public health, safety and welfare while mitigating negative impacts of development to agriculture.

Project Description and Agricultural Setting

The applicant is requesting to subdivide of an existing 199-acre property into two parcels of 80 and 119 acres each. The project site is within the Agriculture land use category and contracted within the agricultural preserve program with a minimum size of 80 acres. Historical use of the property included dry farm activities, while today the property supports grazing.

3282

The property contains Class II, III, and IV irrigated and Class IV non-irrigated soils. These soils are generally suited for crops such as wine grapes, small grains, pasture, almond orchards, and rangeland. Irrigated agricultural crops have not been produced on the property.

Agricultural uses within the project vicinity include wine grape vineyards, pasture, dry farm hay/grain, and almond orchards. Surrounding properties are within the Agriculture land use category.

Evaluation of Agricultural Issues

Land Use Ordinance and the Agriculture and Open Space Element

The Land Use Ordinance (LUO) and the Agriculture and Open Space Element (AOSE) provide the criteria for the minimum parcel size of agricultural subdivisions. Applying the criteria to this property, in the current non-irrigated state, would indicate a minimum parcel size of 160 acres for this property based on land capability and 320 acres if considering current grazing use.

Agricultural Sustainability Impacts

The proposed subdivision would result in potentially significant impacts to agricultural resources because the resulting parcels do not have sufficient resources to sustain long-term agriculture production. Additionally, these smaller parcels would be part of the on going conversion of agricultural lands to rural residential type development. The desirability for this type of land use and parcel size continues to put pressure on lands historically used for agriculture to transition from production agricultural uses to a rural residential type of land use. The creation of additional substandard parcels in agricultural areas typically results in non-agricultural uses on lands with agricultural capabilities that create additional incompatibilities with existing agricultural operations.

Agricultural Preserve Program

This property was contracted as part of the original El Pomar Agricultural Preserve in 1972. The minimum parcel size designated in the agricultural preserve contract for the property is 80 acres. The contract includes a clause indicating that the approval of any subsequent subdivision would need to meet the current rules for the approval of a subdivision. The current rules include the LUO, AOSE and the Rules of Procedure for the agricultural preserve program. In this case, the application of current rules indicates parcel sizes of at least 160 acres each would be required.

In addition, AB 1492 attempts to address the subdivision of Williamson Act contracted parcels. The California Department of Conservation states the "creation of multiple smaller parcels from larger parcels is usually the first step in the eventual sale to individual property owners for residential development, and sale of integral parcels can impair the ability of a rancher or farmer to continue to graze or farm on remaining agricultural parcels, or create conflicts with new nonagricultural uses that may ensue."

329

“For subdivision of Williamson Act contracted land, a local government must have a substantive basis for approving the application and map, it must do so on the basis of a specific and affirmative determination that each of the resulting parcels is large enough to sustain their agricultural uses to which it is restricted, and that the subdivision will not result in residential development of the resulting parcels except where residential use will be incidental to the commercial agricultural use of the land.”

“SB985 (Chapter 1081, Statutes of 1999) amended section 6674.4 of the Subdivision Map Act to require the legislative body of a local government to deny approval of a tentative map or parcel map if it finds the subdivision of Williamson Act contracted land will result in residential development not incidental to the commercial agricultural use of the land. Additionally, in Section 15 of SB 985 the legislature adopted three Attorney General Opinions (92-708 (December 2, 1992) 79-309 (May 11, 1979) and 70-229 (May 25, 1971) as law. The opinions express the requirement that parcels under the Williamson Act be kept large enough to sustain their agricultural use and that subdivision for the primary purpose of residential development violates the Act, regardless of parcel size.”

If you have questions, please call me at 781-5914.

3
C-30